

MEMORANDUM

To: Secretary of State; Joint Legislative Committee on Administrative Rules

From: James Volz, Chairman

Re: Amendment to Public Service Board Rule on cable television, 09P-025

Date: November 20, 2009

Changes

Apart from some very minor changes, the significant change is in the reimbursement mechanism for contributions-in-aid-of-construction in 8.313(A). The Initial Proposed Rule had a mechanism that followed Board Rule 5.600's treatment of electric line extension CIAC reimbursements. The stakeholders¹, including the Department of Public Service, Charter Cable, and Comcast, persuaded Board staff that electric line extensions are sufficiently different from cable line extensions that the same rules should not be applied to both. Instead of a fifteen-year period for reimbursements, the period for cable extension reimbursement is set at seven years. Also, electric companies are allowed to withhold a \$100 administrative fee for each new connection on an extension at the time of the reimbursement. The cable rule does not provide for any fee; however, no payment needs to be made when the calculated reimbursement is less than \$100.

Comments

Participants

The amendment to Rule 8.313 was prompted by legislative action, and the language of the amendment was developed in a collaborative process with cable television operator staff, Department staff, and Board staff. As a result, most of the filings in the process have been negotiations over rewrites rather than comments on a draft. This was true of the public hearing as well, that was only attended by staff from those three groups. Comcast did file a written comment with the stakeholders' final draft, which mostly explains the rationale for the changes.

1. The Department is a "stakeholder" in the sense that it represents the interests of both the existing and the prospective customers of cable companies, as well as the state.

Other commenters

FairPoint Communications filed comments in July. Most of FairPoint's issues were resolved in the final draft. This comment was the only participation by any telephone provider that is not also a cable provider. The Department filed a letter in response that addresses FairPoint's issues.

Vermont Access Network (VAN) filed a comment asking that a section be added to the Rule requiring the cable operator to notify nearby public, educational, or governmental access management organizations of its intent to extend service under the Rule. It may be that VAN does not understand that this portion of the Rule applies only to line extensions inside the cable operator's existing service territory. Any expansion out into new towns or cities must first go through the Board's process for a certificate of public good. Notification to the PEG AMOs of internal construction appears to be an expense to the operator without benefit to anyone else.

One customer filed a comment complaining about high-handed behavior by cable operators, who move or remove channels from their line-ups. He opposed implementing a rule change that benefits cable companies until their behavior is brought under control. There are two answers to this. First, cable operators were already able to collect contributions-in-aid-of-construction, the proposed Rule change only affects some of the procedures. The major benefit to the companies is that they will not need to perform annual house counts, a process that costs many tens of thousands of dollars for very little return in revealing new potential customers. Second, as the customer mentions in his letter, cable operators are free to move channels around or to drop them. This is not state policy but federal policy; state and local authorities have never been allowed to control the carriage or placement of channels on cable, even before cable was deregulated in the 1980's.